monopoly.[18] Competition is still keen, and legally it is a matter of common right.[19] Moreover, the nature of the business is repugnant to such a theory, for a necessary incident of a public calling is the duty to give equal service to all.[20] And if the law should impose such an obligation on underwriters, they would be deprived of that *delectus personarum*, which is a necessary incident to a safe conduct of the business.[21]

VALIDITY OF FOREIGN MARRIAGES. — "A marriage good where made is good everywhere." [1] But England and America seemed to define marriage differently. England maintains that it must be a "voluntary union for life of one man and one woman to the exclusion of all others." [2] So long as the union has these qualities, it matters not under what system of law the marriage contract was created. The monogamous marriage of a British subject in Japan, that complies with the Japanese law, is valid in England,[3] though non-Christian. The "rice" marriage of two Tamils in Ceylon is recognized, since it also involves these characteristics." [4] On the other hand, the restitution of conjugal rights after a Mormon marriage has been refused,[5] although in the very case the defendant had no other wife; so also with a polygamous Parsee marriage.[6] Again, the marriage of a white man to an African Baralong has been declared not a marriage in any sense that can be recognized, for by the custom of the tribe their marriages are terminable at will.[7]

The American courts, on the other hand, have recognized such marriages. Several early cases have held American Indian tribal marriages valid, and have recognized that this status is terminable at will.[8] This does not, however, show whether the American courts regard these marriages as inherently peculiar, or as in fact unions for life, and the right to terminate them at will as only a convenient form of divorce, sanctioned by tribal custom. But a recent case has gone so far as to say that this tribal custom operates to divorce a marriage, contracted outside the tribe. A white man, who had been adopted by the Pottawatomie Indians, married the plaintiff, a white woman, in Illinois. Later he abandoned her and returned to live among the Indians. The plaintiff is refused dower in his lands. *Cyr* v. *Walker*, 116 Pac. 931 (Okl.). This case can

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[18] See FREUND, POLICE POWER, § 377; WYMAN, PUBLIC SERVICE CORPORATIONS, §§ 29–36.

[19] Allgeyer *v.* Louisiana, *supra*.

[20] Inter-Ocean Pub. Co. *v.* Associated Press, 184 Ill. 438, 56 N. E. 822.

[21] See GRISWOLD, FIRE UNDERWRITERS' TEXT BOOK, § 1488.

[1] See STORY, CONFLICT OF LAWS, § 113.

[2] See Bethell *v.* Hildyard, 38 Ch. D. 220, 234.

[3] Brinkley *v.* Attorney General, 15 P. D. 76.

[4] Sastry Velaider Aronegary *v.* Sembecutty, 6 App. Cas. 364.

[5] Hyde *v.* Hyde & Woodmanese, L. R. 1 P. & D. 130.

[6] Ardasee Cursetjee *v.* Perozeboye, 10 Moore P. C. 375.

[7] Bethell *v.* Hildyard, *supra*.

[8] Wall *v.* Williamson, 8 Ala. 48; Johnson *v.* Johnson, 30 Mo. 72; La Riviere *v.* La Riviere, 77 Mo. 512; Kobogum *v.* Jackson Iron Co., 76 Mich. 498, 43 N. W. 602; Earle *v.* Godley, 42 Minn. 361, 44 N. W. 254. So also in Canada. Connolly *v.* Woolrich, 11 L. C. Jur. 197. *Contra*, Roche, *v.* Washington, 19 Ind. 53.

only be explained on the latter of the two above theories. For if an Indian marriage were inherently peculiar only such marriages would be terminable at will, and a marriage contracted outside the tribe would not be affected. On the view in the principal case, two Indians who had migrated to a state that did not permit that form of divorce would find themselves united for life. Therefore America and England probably agree in defining marriage as a union for life.

The recognition of tribal marriage does not prevent a sovereign from forbidding certain monogamous unions for life on the ground that they are incestuous, or against its public policy, such as, for example, the intermarriage of a white and a black person. Nevertheless, both England and America recognize these marriages, if lawfully entered into by foreigners in a foreign country.[9] But they have both hesitated when their own subjects have gone into another country thus to evade the laws of their domicile.[10] They have based their refusal on the doctrine of the Civil law that the personal law of a subject follows him into whatever land he may journey. They cite Huber and other Continental jurists.[11] But the common law knows no such doctrine. Territoriality and not allegiance is the basis of jurisdiction. But these decisions are explicable, as in the last analysis, the sovereign of the domicile of the parties can in extreme cases refuse to superimpose the status of marriage upon a valid contract of marriage, when the nature of the union seems to it abhorrent. The parties would, then, be treated as married everywhere but in their own country.

NATURE OF CRIMINAL CONTEMPT. — A criminal contempt is an act or refusal to act which by detracting from the dignity or authority of a court tends to interfere with the administration of justice. The importance of a summary dealing with it produced a unique procedure, which was early seized upon to enforce the decrees of equity in civil suits.[1] A refusal to do justice to other parties in equity suits thus came to be known as civil contempt, although it is not inherently a contempt of court at all. Confusion has inevitably arisen, because of the similar procedure and the similar result in imprisonment or fine. Both contempts may, in fact, be found in a single act of disobedience.[2] It follows that the nature of the act itself cannot be a conclusive test of the character of the contempt, as the language of some English cases implies.[3] Such a test can only be found in the particular purpose for which the imprisonment or fine is to be used.[4] If punishment is sought, the contempt is criminal; if

[9] *Re* Bozzelli's Settlement, [1902] 1 Ch. 751.

[10] Brook *v.* Brook, 9 H. L. Cas. *193; State *v.* Tully, 41 Fed. 753; Dupre *v.* Boulard, 10 La. Ann. 411. Massachusetts has maintained that the domicile of the parties can make no difference. Medway *v.* Needham, 16 Mass. 157; Commonwealth *v.* Lane, 113 Mass. 458; Sutton *v.* Warren, 10 Met. (Mass.) 451. See also Pearson *v.* Pearson, 51 Cal. 120; Steele *v.* Braddell, Milw. 1.

[11] See Brook *v.* Brook, *supra*, *208.

[1] See 21 HARV. L. REV. 161.

[2] See Bessette *v.* W. B. Conkey Co., 194 U. S. 324, 329, 24 Sup. Ct. 665, 667.

[3] See *In re* Freston, 11 Q. B. D. 545; *In re* Gent, 40 Ch. D. 190.

[4] See Gompers *v.* Bucks Stove & Range Co., 221 U. S. 418, 443, 31 Sup. Ct. 492, 499.